

NO. 5:11-CR-99-FL-1


ORDER

Upon careful review of petitioner's motion and the record in this case, the court has determined that the motion must be recharacterized as a successive petition attacking his conviction and sentence under 28 U.S.C. § 2255. See United States v. Winestock, 340 F.3d 200, 206-07 (4th Cir. 2003). For example, in his motion, petitioner seeks to present "newly discovered evidence" in support of a claim for ineffective assistance at trial. (Rule 60(b) Mot. (DE 230) at 4). Such a claim

“is in substance a successive habeas petition and should be treated accordingly.” Gonzalez v. Crosby, 545 U.S. 524, 531 (2005).

Therefore, the court must dismiss petitioner’s motion so recharacterized for lack of jurisdiction. See id.; United States v. McRae, 793 F.3d 392, 400 (4th Cir. 2015). 28 U.S.C. § 2244(b)(3)(A) provides that before a second or successive habeas corpus application may be filed in the district court, the applicant must move the appropriate court of appeals for an order authorizing the district court to consider the application. Accordingly, petitioner’s motion is DISMISSED for lack of jurisdiction.

SO ORDERED, this the 30th day of April, 2018.



LOUISE W. FLANAGAN
United States District Judge